

## BY AUTHORITY.



## IN MEMORIAM.

The following is a copy of resolutions relating to the death of the late Hon. J. Moanani, passed at a meeting of the Privy Council held on the 18th instant:

WHEREAS, in accordance with the Providence of God, a member of this Council the late Hon. J. Moanani has departed this life, Therefore be it Resolved, That the Council deplore the loss of a highly esteemed member, who was a trustworthy councillor of His Majesty, a patriotic subject of the Kingdom, and a most respected citizen.

Resolved, That the Secretary of the Council be instructed to transmit to the bereaved widow and family of the deceased member a copy of these resolutions.

Resolved, That by His Majesty's consent the members of the Council wear a black arm band on mourning for the deceased for the term of fourteen days from date.

His Majesty the King has been graciously pleased to permit the under-mentioned persons to accept the decorations conferred on them by His Majesty the King of Siam, and to wear the insignia thereof:

Prince Kawanakani—The Grand Cross of the Crown of Siam.  
 Prince Kalamakani—The Grand Cross of the Crown of Siam.  
 His Ex. Walter Murray Gibson—Grand Officer of the Crown of Siam.  
 His Ex. John Makini Kapena—Grand Officer of the Crown of Siam.  
 His Ex. Henry A. P. Carter—Grand Officer of the Crown of Siam.  
 Hon. William L. Green—Grand Officer of the Crown of Siam.  
 Hon. A. F. Judd—Grand Officer of the Crown of Siam.  
 Hon. C. C. Bishop—Grand Officer of the Crown of Siam.  
 His Ex. Curtis P. Smith—Knight Commander of the Crown of Siam.  
 Hon. J. S. Walker—Knight Commander of the Crown of Siam.  
 Hon. George W. Macfarlane—Knight Commander of the Crown of Siam.  
 Col. James H. Boyd—Knight Commander of the Crown of Siam.  
 Major D. Levee—Knight Companion of the Crown of Siam.  
 Lieut. Robert B. Baker—Knight Companion of the Crown of Siam.  
 Lieut. John T. Baker—Knight Companion of the Crown of Siam.

## Notice.

The following resolution was passed by His Majesty, sitting in Privy Council, this eighteenth day of December, 1883:

WHEREAS, a number of silver coins, to wit: One hundred and thirty thousand dollars, in silver half dollars, have been coined and delivered to the Treasury of the Kingdom, which coins are designed to be current silver coins of this Kingdom, and be equal in weight and appearance with the silver coins of the United States, and bear the impress of the image and title of His Majesty the King on one side and the Royal Hawaiian device, or coat of arms, on the reverse; and, whereas, it is proposed by the Government to coin silver dollars, half dollars, quarter dollars, and pieces of ten cents, of the same device and quality, Therefore,

Resolved, That such silver coins shall be, and are hereby, declared by His Majesty, in Privy Council, in accordance with Section 5, Chapter 41, of the Act of the Legislature of 1876, to be legal tender, and receivable in like manner as silver coin of the United States, of like denomination, and that the Minister of Finance be, and he is hereby, authorized to give notice thereof.

J. M. KAPENA,  
Minister of Finance.

Treasury Department, December 18, 1883.  
 419-41-41

MR. A. BARNES has been appointed by the Board of Education School Agent for the District of Waialua, Island of Maui, vice Mr. J. W. Givins, his commission to date from the 1st of January, 1884.

W. J. SMITH, Secretary.  
 Department of Education, December 21, 1883.  
 422-43

## Fish Stalls at Auction.

ON FRIDAY, December 26th, at 12 M., at the front entrance of Aliolani Hall, will be sold THE CHOICE OF STALLS at the Honolulu Fish Market, for the term of one year, from the 1st of January, 1884.

CHAS. T. GULICK,  
Minister of Interior.

Interior Office, December 20, 1883. 415-w11

It has pleased His Majesty the King to appoint PAUL NEUMANN Attorney-General, vice Walter Murray Gibson, resigned.

Interior Office, December 14, 1883.

It has pleased His Majesty the King to appoint the following gentlemen to be members of His Privy Council of State:

Hon. Paul Neumann  
 Hon. William Dwight Alexander  
 Hon. J. S. Walker  
 Hon. John Makini Kapena  
 Hon. Edward Kawanakani  
 Interior Office, December 14, 1883.

Tuesday, December 25th (Christmas Day), and Tuesday, January 1st (New Year's Day), will be observed as National Holidays, and all Government offices throughout the Kingdom will be closed.

CHAS. T. GULICK,  
Minister of Interior.

Interior Office, December 12, 1883. 415-w12

RE ZIEGLER is this day appointed Agent to Take All Knowledgeable to Labor Contracts for the District of Kauai, Island of Hawaii, vice Mr. W. G. Givins, his commission to date from the 1st of January, 1884.

CHAS. T. GULICK,  
Minister of Interior.

Interior Office, December 4, 1883. 415-w13

No person shall excavate any of the streets or road ways of Honolulu for the purpose of attaching or repairing the water pipes, or for any other purpose, without a written permit from the Board of Public Works, and whoever shall do so without such permit, shall be prosecuted to the extent of the law.

CHAS. T. GULICK,  
Minister of Interior.

Interior Office, November 26, 1883. 415-w14

## Portuguese Immigration.

All Parties desirous of securing the services of Portuguese Contract Laborers, under the auspices of the Board of Immigration, are invited to visit the President of the Board, in writing, at an early day as convenient, to the number and class of laborers they require.

CHAS. T. GULICK,  
Minister of Interior and President Board of Immigration.

Interior Office, November 22, 1883. 423-44w1

## THE PACIFIC

## Commercial Advertiser.

SATURDAY, DECEMBER 22, 1883

A GREAT deal of nonsense has been talked and written about the remarks made by the property of the King's Ministers being amenable to the Judges of the Supreme Court in regard to strictly ministerial acts. What does it matter, for instance, to our argument, that the King derives his executive power from the people? If he derived it from conquest, or by inheritance from a conqueror, then there

would be some reason for the people to wish for checks on him and his ministers—checks which under such circumstances it would probably require a revolution to secure. But when, as to a certain extent is the case here, the monarch represents the people through an election, the King and his ministers become the embodiment of the majesty and power of the people themselves, and our contention that they shall not be amenable to impeachment before any tribunal but the Legislature itself becomes far more cogent than in the case of a monarch who has no such supreme title to his position.

Sundry attempts have been made to illustrate our ignorance of the constitutional history of other countries, as bearing on the question we raised by references to matters which have no bearing on the case at all. We unhesitatingly reiterate what we said at first, that if the Constitution of this country allows a Judge of the Supreme Court to interfere with the action of a Minister of the Crown by mandamus or injunction, it is unique among Constitutions.

To say that our contentions involve an approval of despotic power shows utter blindness to their true bearing. It is the prerogative of the Legislature that we contend for. They alone should be judges of the King's Ministers in respect of their Ministerial acts. They represent the people from whom, in theory, all power is derived. And they alone have sufficient derivative authority to deal with those to whom the execution of the will of the people has been constitutionally delegated.

The importation of Hawaiian coins, the case now pending on appeal in the Supreme Court, and the resolution of the Government to enforce the payment of duties and taxes in American gold coin have made the currency question, and the legal tender question the most prominent subjects of the day. One of the points in connection with these questions which arouses the most lively discussion is, "what is to be done eventually with our Mexican dollars, our five franc pieces, our English, Italian and Spanish coins, which at present pass current for dollars and quarter dollars? There will ultimately be a loss upon them to their holders. They have been imported to meet the requirements of the country. Their importation has yielded a legitimate profit to those who engaged in it. Since the imposition of a ten per cent duty on silver coin that importation has ceased, and certain classes of silver coins being constantly exported in small quantities, there has been a marked restriction of supply. This has been partly compensated for by a few importations of English sovereigns, but even these are being constantly drained out of the country on account of the value they possess in relation to silver coin in Chinese ports. The arrival of the Hawaiian silver coinage is opportune, and this fact is recognized by all business men. But if we are to have a coinage of our own, and if we are to make the coins of the United States legal tender here permanently, the day must come when all other coins must be deprived of that currency which the law gives to some and custom gives to others.

In speaking upon this subject we are placed by the pervasiveness of a certain clique which has the control of various newspapers in this town in a position of some embarrassment. Because the tone of this paper is friendly to the King and His Ministers, a constant endeavor is made to represent it as their mouthpiece. The other newspapers seem to be unable to find much to talk about except what the PACIFIC COMMERCIAL ADVERTISER says or what its editor does. We are flattered by this attention but should feel much more complimented if there were more adhesion to facts, and less indulgence in imaginative ideas, on the part of our contemporaries. We have an opinion of our own about the question in hand, and know nothing of the views of the Government or of individual Ministers. It is quite probable that in this case as in several others when the Premier is supported by our all wise contemporaries to have been speaking through our columns, that we hold views quite different to his. To that point we give no consideration whatever. The columns of this journal are intended for the exposition of the views of its editors; and will be used for no other purpose so long as the paper is in the hands of its present proprietors.

The various foreign coins which are in circulation here have been accepted by the people as money, at conventional values, because they had virtually no choice of their own in the matter. The more influential of our business men have really been the dictators on this subject. They have, by agreement among themselves, put the legal tender law into abeyance. It is they, almost exclusively, who have imported the coins we have now in use, and they by whose influence the acceptance of certain foreign coins as of certain fixed value in regard to the legal tender was enforced on the community by the Privy Council. But the people at large both native and foreign have had no hand in the matter, and have been helpless to choose a course in regard to it. It will be right and proper that they should be scrupulously protected when these coins which they have been taught to use are put out of circulation. A certain loss, probably not a very large one, must fall on the community when these coins cease to have the right of currency. This loss ought not to be allowed to fall upon the individual owners of such coin, but should be borne by the broad shoulders of the community at large. More than one way may be devised to secure this end. We leave details for future discussion. Our object to-day is to suggest that the desultory talk on this subject which is going on in the town be exchanged for some definite action—that the people who are most interested lead the way, and enable us to give an expression in clear and forcible terms of the popular view on the matter. Such an expression of opinion will be a suggestion to the Government and a guide to the Legislature, and we cannot see how, but that it will be respected by both.

Time was when international exhibitions were comparatively rare occurrences, but of late they have become quite common. During 1883 both Amsterdam and Boston have held highly successful exhibitions of foreign and national products and manufactures, and there have been expositions of a more local character to which nevertheless many foreign exhibits have been sent. A more limited range of subjects was taken for the Great International Fisheries Exhibition of London which is reported to have been, in all respects, one of the most successful affairs ever got up. Several exhibitions of different characters are announced for 1884 and 1885, and it is quite evident that the custom of holding such gatherings has become extremely popular

with all progressive nations. The men who took a leading part in promoting the earlier international exhibitions always held that they would become popular more than because of the splendid sights they presented. Experience has taught the producers and manufacturers of world and their customers the great usefulness of thus bringing the wares of all nations together, and the custom now so well established is likely to become permanent one.

It is not probable that this city will soon see itself the theatre for one of these grand commercial and artistic panoramas. Some sanguine spirits have indeed already talked of such a thing, and, in an imperfect form, something of the sort may be seen here. But the better time, is that of making her products and her possibilities known abroad at these World's Fairs. A fair attempt in this direction, so far as our chief products are concerned, was made this year, under the auspices of the Government and the Planters' Labor and Supply Company, at Boston. The people of this country are again invited to join in a great exhibition to be held in America. This time the affair takes a national shape and the invitation comes from the President of the United States, the President of the Congress, the month of the year, 1884, has been selected for this Exhibition—the centennial of the first shipment of cotton from the States. The Exhibition is to be held in New Orleans, and we trust the opportunity it affords for this country to exhibit will not be slackly taken advantage of. We may not have a great deal to show, but we ought to make the best appearance possible, and above all things, should not omit to make known what we have here, but also something of what might be done in now neglected industries if capital and the right men to use it were available. Incalculable good might result from a systematic effort of this sort.

We are accused of having, in our leading article of Saturday last, impugned the integrity of the Chief Justice. We deny the charge in toto. Our article of that date upon the so-called Mandamus contained only one expression of opinion and that was to the effect that the full Bench of Judges would be unable to find a flaw in the decision of the Chief Justice. Though we admire both the pluck and the ingenuity of the counsel for the Crown who undertake to argue to the contrary, we are of opinion that there is but one meaning to the word "par" and it was not that which we intended to convey. We deny the charge in toto. Our article of that date upon the so-called Mandamus contained only one expression of opinion and that was to the effect that the full Bench of Judges would be unable to find a flaw in the decision of the Chief Justice. Though we admire both the pluck and the ingenuity of the counsel for the Crown who undertake to argue to the contrary, we are of opinion that there is but one meaning to the word "par" and it was not that which we intended to convey.

There is a question involved in this case far more important to this country than the currency or the sale of bonds. It is this: Can any or all the Judges of the Supreme Court call in question the acts of His Majesty in Cabinet Council. If the constitution of this country gives them that power the sooner it is amended the better for everybody, and for nobody more than the Judges themselves. No similar thing was ever heard of before in any country where its constitution was monarchical, oligarchical or republican. It is a very dangerous power to put into the hands of even such men as judges are usually chosen from. A Judge acts but under the King's commission, he is a subject of the realm and a public servant. He holds a highly responsible place but his judicial function is but that of a substitute for the King to whom in theory all appeals are directed. To say that he shall sit in judgment upon the actions of him from whom all his authority and jurisdiction is derived is absolutely absurd.

There is a constitutional method of dealing with the King's Ministers when they do wrong. They are impeachable before the Legislature of the realm. There is no other logical or proper method of dealing with them. If the constitution of this Kingdom allows them to be arraigned before the Supreme Court Judges, it is unique among Constitutions and, we repeat, the sooner it is brought into accord with precedent and common sense the better.

## FOOD FOR THOUGHT.

## No. VIII.

Those who had the misfortune to have to be about in our streets at night during the recent *tona* were made painfully aware of the insufficient manner in which the city is lighted. On the first night of the bad weather, it was just after the full moon, and consequently no lamps were lighted at all. The light of the moon could not penetrate the mass of vapor that hung over the city and the darkness of the streets was deplorable. Even though the lamps were lighted on the subsequent evenings the light was quite inadequate to enable the pedestrian to steer his way among the puddles and sheets of water which occupied the foot-paths. In many streets there are no lamps at all and in others the distance from lamp to lamp is so great that the major part of the street is altogether unlighted.

It has become an axiom that the good lighting of a town is one of the most efficient helps that the police force can have both in the prevention and in the detection of crime. The present state of darkness visible which characterizes our streets is a cloak and shelter for all sorts of crime. The chiefs of the Police Department are very sensible of this fact, and before the Assembly met in 1882 Marshal Parker sent in a request for an appropriation for fifty more lamps for the town. This item of the appropriation bill did not find favor with the Legislature, and the Government appears to have thought it useless to press for a reconsideration of the vote which threw it out. The men who may be elected to represent this city in the next Assembly ought to be made to pledge themselves to see that a liberal vote be made for this and other Municipal purposes of which the sensible of this fact, and before the Assembly met in 1882 Marshal Parker sent in a request for an appropriation for fifty more lamps for the town. This item of the appropriation bill did not find favor with the Legislature, and the Government appears to have thought it useless to press for a reconsideration of the vote which threw it out.

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raised as Road Tax. But when we consider that a third part of the inhabitants of the country are to be found in Honolulu the conviction forces itself upon us that even the most neglected country district (if indeed any district can so call itself, has had, in proportion to its numbers, and to its contributions to the general revenue, more money devoted to it by the Legislature than Honolulu has. The citizens of the capital ought to bestir themselves to see that more justice is done to them in the future.

## No. IX.

The Postoffice of Honolulu, has during the past three years, made a certain amount of progress that is commendable to most who direct and carry out the working of the institution. The increased number of letters, the quicker sortment of the mails, the inter-island money-order system and last of all, the erection of twelve street letter boxes about town and in the suburbs, are all steps in the right direction. Looking ahead, we have the foreign postal money orders as a prominent feature to be scored to the credit of the present Postmaster-General. But there is something lacking and before that something becomes an accomplished fact, the Postoffice cannot be credited with affording that convenience to the public which it ought. What the public want, and it is almost an absolute necessity, is the delivery of letters at their residences or places of business, as addressed. One of the greatest drawbacks to carrying out this important branch of Postoffice work is the want of knowledge on the part of residents, of the number of their houses. Again, many houses are incorrectly numbered. An instance of this is to be seen on Fort Street where the house adjoining No. 134 is numbered 85. How to find a house which is incorrectly numbered would be a puzzle to the letter carrier, unless he knew the name of the inmate. Everyone, of course, knows where his own house is located, and in many instances the house has a name by which it is known to the public, but how often is it the case that a tenant does not know the number of his house, and as a natural consequence cannot impart the information to his correspondents. One number ought to lead to the next, but this is not the case in and around Honolulu. If a man chooses to build a house, say on the Plains, or elsewhere out of town, he invariably chooses to situate his residence, but does not number it. It is the duty of the authorities to number it. The affixation of dubbing houses with names instead of numbers, often gives rise to difficulty on the part of the storekeeper who is commissioned to send a parcel thither. How much worse is it in the case of a stranger arriving and asking to be directed to a mutual friend's residence; you are at a loss how to direct him for a want of a number. And as it is, the Postmaster sees difficulties in the way of delivering letters. He might know where "Alendale," "The Bovey," "Leahy," or "Little Britain" is situated, but it does not naturally follow that the native delivery messenger would be possessed of the same valuable information, hence the necessity of a number which all, foreigner and Hawaiian alike, can read and understand. Because you and I know where everybody lives, it does not follow that Mr. Johnson can send his Chinese servant to the house of Mr. Jackson, who occupies "The Lindens," with a note of importance and put upon its delivery. More likely, after an hour or two's suspense the Celestial would return with the consoling (?) expression "No save that man house."

But to return to the Postoffice. Would it not pay better to deliver letters twice or three a day, than to be compelled to keep a highly salaried clerk standing for about 350 days a year out of the 365 at the Postoffice window sorting A. B. & C. for Dick, Tom or Harry, that don't receive a letter once in six months? It is unnecessary to advert to the crowding and pushing that non-box holders are subjected to on the arrival of a foreign mail. This number of houses is one of the much needed municipal subjects to which we shall be obliged to advert in our "Food for Thought" and which shows the present necessity for a proper Municipal Government.

## EDITORIAL NOTES.

By the incoming mail, due on to-day, we may expect to receive definite news with regard to the impending war between China and France. Should war be declared, it will affect more or less the immigration of Chinese coolies. Notwithstanding the anti-foreign feeling that prevails over the whole of China, and which has been abundantly shown of late, the bulk of the foreign classes probably follow commercial pursuits to that of warfare. The few who would precipitate themselves into the ranks of the so-called army, are those that are simply influenced by their blind hatred of the foreigner, whilst on the other hand, those who would prefer to till the soil, comprise the majority of the coolie classes. It is from the latter class that the Hawaiian labor market has been so abundantly supplied with Chinese. The rustics are indifferent to warfare if not influenced by the latter, but it is a lamentable fact that undue influence is often brought to bear upon them.

The *Hongkong Daily Press*, commenting upon the recent outbreak of hostilities, says: "Disaffection with the existing Government has been simmering for years, and it is the opinion of close observers of the Chinese that it is only waiting an opportunity to boil over. It therefore becomes an interesting question whether in the event of the country being drawn into war with a foreign power, the people would present a united front or would take the opportunity to revolt against the Manchus. The question, interesting as it is, is of too speculative a character to be answered; time and circumstances alone can solve it. It is, however, worth while to consider what hold the Government has over the people. The Chinese are a patient and long suffering race, but the continual 'squeezing' to which they are subjected tends to breed ill-feeling towards the Government, apart from any sentiment of patriotism which might prompt them to attempt the overthrow of the Manchus. The Taiping Rebellion proved how ready the people were to revolt, and whenever a capable leader again appears they will be found equally ready to follow him. The White Lily sect has its ramifications all over the length and breadth of the empire and is a perpetual source of anxiety to the Governments of the different provinces as well as to the Imperial Government."

In any case, whether war or rebellion, thousands of coolies will be only too glad to quit their native land and seek the Chinese paradise in the mid Pacific as a place of refuge.

As suggested by us, the committee having in charge the collection of donations for the lepers, have extended the time during which contributions may be sent in to Saturday, December 29. We learn that a good many articles have already been received by them and it is to be hoped that they will continue to flow in. Still like the lepers and the multitude of old, everyone of the thousand lepers may receive something to show that they have not been forgotten in their lonely life. In such wintry weather as we are now having, many of the gifts sent will be very opportune and help to mitigate the sufferings which these outcasts have to endure, and which ought to enlist the sympathies of every man, woman and child among us. We learn that one firm of mechanics on Fort Street sent in, yesterday, to the Committee, a check for \$62 to assist the leper feast.

## SUPREME COURT.

Special Term for the Hearing of Cases in Banco only.

ON THE BENCH, JUDG. C. J. McCULLY & JUSTICES J. J.

Friday, December 21, 1883.

W. B. Castle et al. respondents, vs. John M. Kapena. Minister of Finance, appellant.

Mr. A. S. Hartwell for respondents.  
 His Ex. Paul Neumann, Attorney-General, and Messrs. E. Preston and W. A. Whiting for the appellant.

The petition and answer in this case were published in full last week. The petitioners are taxpayers, citizens and residents of Honolulu, and the substance of their prayer is, that John M. Kapena, Minister of Finance, be restrained from issuing certain coupon bonds, to wit: of the Hawaiian Islands, of the value of \$100,000, which they claim that the issuance of said bonds for silver coins, which they value at eighty-two per cent. of the value of the United States gold coin, would cause the public good and administration of justice to suffer.

The appellant denies that he is about, or intends to, or will issue said bonds below par, or to receive or accept therefor coins of less value than the amount of the lawful money of the Hawaiian Islands.

Mr. Hartwell opened the case for the respondents. He submitted that selling bonds for silver half dollars would be selling them for less than par. He claimed that the bonds could not be so deemed below par, and asked what was the meaning of par? United States gold coin or its equivalent does not mean any gold coin. It must mean some coin. Equivalent must mean an actual value, intrinsic or otherwise. He admitted that value was relative. The legal tender of the country is likely to change its value at any time.

He contended that there is no public emergency or public excitement necessitating the issuance of Government securities. Bonds cannot be issued unless for United States gold coin or its equivalent in full. There was another point in the case that was the most important ever presented to this tribunal, and he was happy to see on the opposite side, the most eminent and learned counsel of the community. He hoped that all the authorities would be called to this was a question not to be decided hastily. His desire was to meet all the points in the case and to answer them fully. He did not wish to evade any one point. The learned counsel here referred to the act of mandamus under which the case was brought, and he held that there was no exception in the statute to officers of the Crown. The constitution stated clearly that the King cannot be sued, but his ministers are responsible and can be sued in cases arising under and from the law. He contended for the impracticability of impeachment where a minister could resign before the meeting of the Legislature. Suppose a minister were to do wrong there is no remedy. Impeachment does not lie for mistakes and negligence which do not amount to crime. Suppose a member of the Cabinet were to mortgage the country, or advance monies without security, would not heavy taxes be levied? All private property would be depreciated by an act of that nature. He referred to the British Constitution and English liberty, which conferred on the people the right to petition their Sovereign, and the Queen regards herself bound to submit the petition to her Lord Chancellor. He asked what exception a man should have from the law because he is a minister of the crown? If an Attorney-General were to do wrong is he to bring a prosecution against himself criminally or civilly? Official rank has nothing to do with the prosecution. There were other principles to be decided. He had heard it intimated that the Supreme Court could have no jurisdiction over any acts done by the King in Cabinet Council.

The action of the Cabinet must be subject to the constitutional provisions. The Judiciary was organized to effect the execution of laws "according to law and justice," and this can only be done by deliberate judicial determination of cases duly brought before the court. This is no usual power assumed by the court. The books are full of similar cases against Governors and even the President of the United States.

He cited Sec. 824 Civil Code empowering the Supreme Court to pass upon its constitutionality of all laws, and Sec. 891, empowering the issue of writs of *habeas corpus* to all persons, officers, corporations and officials. The integrity and future independence of the Kingdom depend upon the due observance of these statutes and constitutional provisions by the courts, as it was in contemplation of such provisions that the Great Powers had thus far maintained their independence.

The counsel cited authorities to support the right of a private individual to appear in such cases as the present without presenting in the name of the Attorney-General. The Supreme Court of the United States and about a dozen of the States have so held and the eminent Judge Cooley, in his treatise on Taxation has stated such acts done by the King in Cabinet Council. As has Judge Dillon in his work on Municipal Corporations.

Where the effect of the act complained of will be to increase the burdens of the complainant by taxation or otherwise, said right of interference will attach to said act and annul any unlawful official action in the handling of the credit of the community unlawfully.

The counsel explained the reason why said courts refuse to recognize private individuals as the champions of public rights, to be the danger of thus exposing public officials to vexatious litigation at the expense of public citizens. But he criticized this principle, and said that the judicial discretion was a sufficient protection to the official. The point as to whether the majority or minority of the community is complaining is without force, as the majority may have become callous to official irregularities. Still the right may be extended even to a small minority, to insist upon the proper and honest exercise of his official functions. The Court do not act upon the principle of a "town meeting" and take a show of hands upon such a question.

In the theory contended for by the defense, crops out the absurd and antiquated principle that the Sovereign is the source of all justice, putting his hands deep into the pockets of both parties to such proceedings as the law. Numerous English cases were cited to sustain the position taken by the counsel, among them: *Walsh vs. The Secretary of India*, to coerce the payment of a pension, and the *King vs. The Lords of the Treasury* for a Mandamus the right to which was conceded by the court. In cases where the Court has sole authority over the distribution of funds, courts will not interfere by injunction or mandamus, but upon the principle that it is a sole and discretionary authority that is sought to be controlled. Courts have not hesitated to exercise jurisdiction over the Queen's officers; simply because they are such officers. One's official rank, however exalted (beneath the crown) does not place him beyond the reach of judicial control.

He quoted from a letter from Frederick the Great, advising his judges to apply the law of the

land, even though contrary to the Royal mandate, and quoted at large from Lieber's Civil Liberty to same effect.

The acts of even the King, if illegal, will be set aside by the law, notwithstanding the theory that the King is incapable of doing wrong, citing *Brown vs. Legal Medicine*, as authority.

The tendency of the Courts as to regard the use of the name of the Sovereign as prosecutor in such cases, to be purely nominal, and to recognize the right as belonging to the individual citizen.

Heigh's Extraordinary Legal Remedies.

Mr. Preston, for the Government, began his address to the Court at 11:35 A. M. He said: This is the most important case that has ever come before this tribunal for adjudication, and will, whatever be the result, be a landmark in our legal and political history.

We do not deny the responsibility of Crown officers to the courts, but we do deny that they are responsible in a proceeding like this. The complainants have mistaken their remedy. According to their own showing their appropriate remedy is not *mandamus* but *injunction*, which might lie in this case, but he thought not.

Quoted from Art. XX. of the Constitution providing for the distinct existence of those departments of the Government. Also from an English case to show that assumpsit does not lie against the Secretary of War for money due as pensions, although that officer may have received the money to pay it. This is on the principle that the money is the property of the Crown and the duty to pay it over attached only as between the officer and the Crown, to whom alone the executive officers of Government are responsible.

From *Tapping on Mandamus* 151, he quoted to show that Mandamus would not lie to command the King or Queen, or their officers, as such. Same book, p. 315. Mandamus does not lie against the Lords of the Treasury, the case of the King vs. the Lords of the Treasury, in 4 A. & E. having been much misunderstood, it having in reality affirmed the doctrine that mandamus was not lie against the Crown as such.

The Court refused a Mandamus to the Lords of the Treasury to enter a certain minute in their books, to effect the payment of a sum of money contributed to a certain superannuation fund, by an Act of Parliament.

From 2 Am. Rep. 719. Counsel quoted to show that the functions of the three departments of Government could not interfere with each other in the exercise of their respective duties, and that Mandamus would not lie against the Governor of Louisiana to compel him to deliver certain bonds which had been authorized by statute. The functions of each department should be exercised, as far as possible, independently of interference with each other. Just before John Adams retired from the Presidency of the United States, Margery was appointed and commissioned Justice of Peace of the District of Columbia. The commission was not delivered till after Jefferson's assumption of the Presidency, when the delivery of the commission was forbidden, and on application to the Supreme Court a Mandamus to compel its delivery was refused.

The court of Rhode Island has decided to the same effect in a case cited, on the ground that it would provoke a conflict between the judiciary and executive departments. The Supreme Court of Mississippi has held to the same effect, as has also the Supreme Court of Michigan. In an attempt to coerce the Governor by Mandamus whether the duty sought to be enforced be ministerial or political. In this view of the law the Supreme Court of Minnesota refused a Mandamus to the Governor.

Counsel contended that the King and Cabinet were acting in a capacity which could not be reached by judicial control.

That the Mandamus sought in this case should not lie, he contended, because the jurisdiction of the Court, that no one Judge of the Court, but the Court itself, if any tribunal, has the authority to control the acts of the Cabinet or Privy Council when unconstitutional.

The present application for a Mandamus upon the Minister of Finance is inappropriate. Mandamus contemplates a command to do a certain thing, whereas the present writ forbids the doing of something.

Would the present writ affect the successor of the present Minister, should one be appointed? He submitted, not. That the writ was merely a personal mandate and would bind no one but him to whom directed.

During the course of his argument the counsel quoted, *Gedley vs. Lord Palmerston* 3 Broadbent & Bingham 275; *Mayor et al. vs. Bridgegate* 6 A. & E. 339; *Oliver vs. Warrmouth* (American) 2 Am. R. 712; *Mauran vs. Smith*, 5 Am. R. 564; *State vs. Warrmouth*, 13 Am. R. 126; *People vs. Governor*, 18 Am. R. 89; *Rice vs. Austin*, 18 Am. R. 130; *Tapping on Mandamus*, p. 161 title "Crown" ditto *Lords of Treasury*, p. 315.

It being noon the Court took a recess until 1:30 P. M.

Upon resuming, Attorney-General Neumann began his address to the court. In opening his remarks, he expressed the purpose to confine his attention to the statute of 1882 authorizing a Government loan and the construction which that statute should receive. However, since all the forces of the argument for plaintiff were directed to the question of jurisdiction, he did not claim for any person, minister or not, exemption from responsibility or liability under the laws. He thought so important a question could not receive too much light. There is no one from the highest to the lowest of the law, who is not subject to the law, as Judge Hartwell claimed, to be the position of the appellant.